

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR06-559

February 21, 2007

DEMARION DESHUN MORTON
APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR05-3518]

V.

HON. WILLARD PROCTOR, JR.,
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Demarion Morton was convicted in the Pulaski County Circuit Court of theft by receiving. He was sentenced to three years' probation and a \$300 fine. Morton's sole point on appeal is that the trial court erred in denying his motion for directed verdict on the grounds that evidence was insufficient to support the conviction; specifically, Morton contends the State failed to prove that he knowingly possessed a stolen credit card. We find no error and affirm.

At trial, former police officer Jason Brolo testified that on August 8, 2005, while on patrol, he came upon Morton and another man having an argument in the middle of the street. When Brolo approached the men, Morton, without instruction from Brolo or anyone else, got down on the ground, got up, and then got down on the ground again. Morton then told Brolo

that he was on ecstasy and sherm. Based on that information and Morton's erratic behavior, Brolo took Morton into custody. Brolo searched Morton and found a gas station credit card issued to Karen Anderson in Morton's wallet. Brolo confirmed that the credit card had been reported stolen and arrested Morton.

Anderson testified that her purse, with the credit card in it, was stolen from her vehicle on July 30, 2005. She further testified that Morton did not have permission to possess her credit card. The trial court found Morton guilty of theft by receiving.

We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Jones v. State*, 348 Ark. 619, 74 S.W.3d 663 (2002). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence that is of sufficient certainty and precision to compel a conclusion one way or the other and pass beyond mere suspicion or conjecture. *Id.* On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.*

Arkansas Code Annotated section 5-36-106(a) (Repl. 2006) states that "[a] person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person, knowing that it was stolen or having good reason to believe that it was stolen." Under this statute, "receiving" means acquiring possession, control, or title or lending on the security of the property. Ark. Code Ann. § 5-36-106(b). Theft by receiving

requires that the defendant act “knowingly,” meaning that the defendant is aware of his conduct or the attendant circumstances. Ark. Code Ann. § 5-2-202(2) (Repl. 2006).

Morton contends that there is insufficient evidence that he knew that he actually possessed a credit card. In support, he cites Ark. Code Ann. § 5-36-103(a)(1) for the proposition that the State must prove that he knowingly exercised unauthorized control over the property of another person. Morton’s reliance on § 5-36-103(a)(1) is misplaced. Morton was charged with theft by receiving, not simple theft. Knowledge that he possessed the credit card is not an element of the crime of theft by receiving. As stated above, under the theft-by-receiving statute, the knowledge element comes into play after possession is shown. Only then must the State prove that Morton knew or had good reason to believe that the property was stolen. Here, the possession of the credit card by Morton was established, and the State correctly relied upon Ark. Code Ann. § 5-36-106(c), which provides that the unexplained possession or control by a person of recently stolen property shall give rise to a presumption that he or she knows or believes that the property was stolen.

The presumption found in Ark. Code Ann. § 5-36-106(c) was at issue in *Williams v. State*, 93 Ark. App. 353, ___ S.W.3d ___ (2005). There, Williams argued that the State failed to produce substantial evidence that he knew the property was stolen or that he had good reason to believe that the property had been stolen. There was testimony from a gun owner that his gun was stolen from his home. Four months later, a police officer found the gun on Williams. Williams contended that the only evidence in support of the conviction for theft

by receiving was that the gun was found in his possession four months after it was stolen. He argued that the four-month gap could not be considered “recently stolen.” Williams also claimed that the State failed to establish any type of connection between him and the gun owner; that Williams had ever been in the gun owner’s home; or how Williams obtained the gun. We disagreed, concluded that the facts gave rise to the application of the presumption in Ark. Code Ann. § 5-36-106(c), and found substantial evidence to support the conviction because Williams was in unexplained possession of the gun four months after it was reported stolen. *Id. See also Henson v. State*, 94 Ark. App. 163, ___ S.W.3d ___ (Feb. 8, 2006) (holding that appellant’s unexplained possession of a recently stolen credit card gives rise to presumption found in Ark. Code Ann. § 5-36-106(c), that he knew or believed property to be stolen).

In the case at bar, substantial evidence supports Morton’s conviction for theft by receiving. Possession was established: Anderson’s credit card was found in Morton’s possession—in his wallet—only nine days after it was stolen. Knowledge that the credit card was stolen was established. Because there was no explanation as to why Morton had a recently stolen credit card in his possession, knowledge is presumed pursuant to Ark. Code Ann. § 5-36-106(c)(1).

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.

